

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No.: EB-07-SE-132
)	
Leetek America, Inc., a subsidiary of)	NAL/Acct.: No. 200832100072
Lee Technology Korea, Co., Ltd.)	
)	FRN: 0017761271

FORFEITURE ORDER

Adopted: September 25, 2012**Released: September 25, 2012**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Leetek America, Inc. (Leetek)¹ for its willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (Act),² and Section 2.803(a) of the Commission's rules (Rules).³ The noted violation involves Leetek's marketing of an unauthorized pager transmitter system.⁴

II. BACKGROUND

2. On August 25, 2008, the Enforcement Bureau's Spectrum Enforcement Division issued a *Notice of Apparent Liability for Forfeiture* to Leetek in the amount of \$14,000 for its apparent willful and repeated violations of Section 302(b) of the Act and Section 2.803(a) of the Rules in connection with its marketing of two models of unauthorized pager transmitter systems.⁵ The Division's investigation into this matter was initiated by a complaint that Leetek was marketing a pager transmitter system that did not comply with the Rules and was causing interference to primary licensed operators.

3. In the *NAL*, the Division found that Leetek apparently violated Section 302(b) of the Act and Section 2.803(a) of the Rules by marketing via its website two models of pager transmitter systems, the LTK-1700CT and the LTK-1400S, without prior Commission authorization.⁶ Leetek responded to the *NAL* on September 2, 2008.⁷ In its *NAL* Response, Leetek repeats the argument it raised in its response

¹ Leetek America, Inc. is the United States subsidiary of Lee Technology Korea, Co. Ltd., which manufactures pager transmitter systems for sale in the United States.

² 47 U.S.C. § 302a(b).

³ 47 C.F.R. § 2.803(a).

⁴ A pager transmitter system is a system licensed under Part 90 of the Rules for low power, secondary use, including paging, in the frequency range 450–470 MHz. *See id.* §§ 90.35, 90.261, 90.267.

⁵ *See Leetek America, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12737 (Enf. Bur. 2008) (*NAL*).

⁶ *See id.* at 12741, para. 11.

⁷ *See* Letter from Sungsoo Lee, Chief Executive Officer, Leetek America, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 2, 2008) (on file in EB-07-SE-132) (*NAL* (continued....))

to the Division's initial letter of inquiry that that it imported three units of the LTK-1700CT solely for the purpose of design review and performance testing.⁸ Leetek's NAL Response also clarified information Leetek submitted to the Division in its LOI Response with respect to the LTK-1400S pager transmitter system. Specifically, Leetek asserts that it never marketed a pager transmitter system with the model number LTK-1400S, and that its third party website provider mistyped "LTK-1400S" as the model number for Leetek's authorized LTK-1400A pager transmitter system.⁹

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,¹⁰ Section 1.80 of the Rules,¹¹ and the *Forfeiture Policy Statement*.¹² In examining Leetek's NAL Response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.¹³ As discussed below, we have considered Leetek's NAL Response in light of these statutory factors and find that a reduction of the proposed forfeiture is warranted.

5. Section 302(b) of the Act provides that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section."¹⁴ Section 2.803(a) of the Rules prohibits the sale or lease, offer for sale or lease (including advertising for sale or lease), distribution for the purpose of selling or leasing, importation, or shipment, of radio frequency devices,¹⁵ such as pager transmitter systems unless, in the case of a device subject to certification, the device has first been properly authorized, identified, and labeled in accordance with the Rules.¹⁶

6. In its NAL Response, Leetek admitted that its LTK-1700CT pager transmitter system was not certified until January 3, 2008, but asserts that it imported three units of that model in September

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Response). As part of its NAL Response, Leetek provided a copy of its 2007 tax return purportedly to demonstrate that at the time of its submission, Leetek as an entity was not "fully organized." *See id.* at 2.

⁸ *See id.* *See also* Letter from Sungsoo Lee, Chief Executive Officer, Leetek America, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 30, 2008) (on file in EB-07-SE-132) (LOI Response).

⁹ *See* NAL Response at 2.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80.

¹² *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹³ *See* 47 U.S.C. § 503(b)(2)(E).

¹⁴ *Id.* § 302a(b).

¹⁵ A radio frequency device is "any device which in its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means." 47 C.F.R. § 2.801.

¹⁶ *See id.* § 2.803(a). Pager transmitter systems are intentional radiators that must be certified by the Commission prior to marketing. *See id.* § 15.201(b). An intentional radiator is a "device that intentionally generates and emits radio frequency energy by radiation or induction." *Id.* § 15.3(o).

2007 solely for the purpose of design review and performance testing.¹⁷ Division personnel observed, however, that Leetek advertised the LTK-1700CT for sale on its website in November 2007, approximately two months prior to the date the model was certified.¹⁸ As discussed in the *NAL*, Leetek's marketing of the LTK-1700CT model does not fall within any of the exceptions set forth in the Rules.¹⁹ Sections 2.803(c) and (d) of the Rules permit the advertising or display of a radio frequency device prior to the issuance of an equipment authorization in three circumstances: (i) if the advertisement (e.g., at a trade show or exhibition) contains a conspicuous disclaimer notice stating that the device has not been authorized and is not available for sale;²⁰ (ii) if the product is a prototype of a device that has been previously authorized but differs somewhat from the authorized product;²¹ or (iii) if the offer for sale is solely to business, commercial, industrial, scientific or medical users and the device at issue is still in the conceptual, developmental, design or pre-production stage, provided that the prospective buyer is notified that the device is subject to Commission rules and will comply with those rules prior to delivery.²² Because Leetek did not display the disclaimer notice required by Section 2.803(c) or (c)(1) in connection with its marketing of the uncertified LTK-1700CT pager transmitter system, Leetek violated Section 2.803(a) of the Rules.

7. Leetek also contends that it never marketed or sold a pager transmitter system with a LTK-1400S model number.²³ According to Leetek, the company was marketing an authorized pager transmitter system (the LTK-1400A), but its third-party website provider "mistyped" the model number as "LTK-1400S."²⁴ Based on these statements, which were made under penalty of perjury, it appears that the device mistakenly marketed on Leetek's website under model number "LTK-1400S" was properly authorized. Therefore, we find that a reduction of the proposed forfeiture is warranted as to that model.

8. Having considered Leetek's response to the *NAL* in light of the applicable statutory factors, our Rules, and the *Forfeiture Policy Statement*, we conclude that Leetek willfully²⁵ and repeatedly²⁶ violated Section 302(b) of the Act and Section 2.803(a) of the Rules in connection with its

¹⁷ See *NAL* Response at 2.

¹⁸ See *NAL*, 23 FCC Rcd at 12738, para. 3.

¹⁹ See *id.* at 12739–40, para. 8.

²⁰ See 47 C.F.R. § 2.803(c) (requiring the following disclaimer: "This device has not been authorized as required by the rules of the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased, until authorization is obtained.")

²¹ See *id.* § 2.803(c)(1) (requiring the following disclaimer: "Prototype. Not for sale.")

²² See *id.* § 2.803(d).

²³ See *NAL* Response at 2.

²⁴ See *id.*

²⁵ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312 clarifies that this definition of willful applies to Sections 312 and 503 of the Act, H.R. Rep. No. 97-765 (1982) (Conf. Rep.), and the Commission has so interpreted the term in the Section 503(b) context, see *So. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387–88, para. 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (*Southern California*).

²⁶ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission (continued....)"

marketing of the uncertified LTK-1700CT pager transmitter system, and is therefore liable for a forfeiture in the amount of \$7,000.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311, and 1.80 of the Rules,²⁷ Leetek America, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.²⁸

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within fifteen (15) calendar days after the release date of this Forfeiture Order.²⁹ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.³⁰ Leetek America, Inc. shall send electronic notification of payment to Ricardo Durham at Ricardo.Durham@fcc.gov, Linda Nagel at Linda.Nagel@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

11. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³¹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

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is continuous, for more than one day.” 47 U.S.C. § 312(f)(2); *see also Southern California*, 6 FCC Rcd at 4388, para. 5.

²⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

²⁸ 47 U.S.C. § 302a(b); 47 C.F.R. § 2.803(a).

²⁹ *See* 47 C.F.R. § 1.80.

³⁰ 47 U.S.C. § 504(a).

³¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

12. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³² If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by first class mail and certified mail return receipt requested to Sungsoo Lee, Chief Executive Officer, Leetek America, Inc., 530 Highland Station Drive, Suite 2004, Suwanee, GA 30024.

FEDERAL COMMUNICATIONS COMMISSION

John D. Poutasse
Chief, Spectrum Enforcement Division
Enforcement Bureau

³² See 47 C.F.R. § 1.1914.